

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 8242 of 2006

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ABDULBHAI HAJIBHAI KHOJANI - Petitioner(s)
Versus
SURENDRANAGAR MUNICIPALITY & 1 - Respondent(s)

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Appearance :

MR AA QURESHI for MR SHAKEEL A QURESHI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MS VINITA VINAYAK for M/S THAKKAR ASSOC. for Respondent(s) : 2,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 07/09/2006

ORAL JUDGMENT

Heard the learned advocates.

This petition under Article 226 of the
Constitution of India has been preferred by a retired

Medical Officer of the respondent – Surendranagar Municipality (hereinafter referred to as, **“the Municipality”**).

The petitioner joined the service of the Municipality as Medical Officer in the year 1973. After serving for 32 years, on reaching the age of superannuation, he retired from service on 30th June, 2005. It is the grievance of the petitioner that till now he has not been paid his retiral benefits i.e. provident fund, gratuity and the leave salary. It is, however, admitted that pending this petition the petitioner has been paid the provident fund amount.

It is the case of the Municipality that the Municipality has no rules for payment of gratuity except under the Payment of Gratuity Act, 1972 (hereinafter referred to as, **“the Act of 1972”**). The petitioner not being an employee within the meaning of the Act of 1972, he is not entitled to gratuity.

Be that as it may, in case the petitioner is entitled to receive gratuity under the Act of 1972,

the petitioner has a statutory remedy under the Act. The petition under Article 226 of the Constitution of India, therefore, shall not lie.

As to the leave salary, it is not denied that the petitioner is entitled to leave salary.

In above view of the matter, the petition is partly allowed. The petitioner may, for the payment of gratuity, approach the Controlling Authority under the Act of 1972. If such an application is made before the Controlling Authority, the Controlling Authority shall decide whether or not the petitioner is an employee within the meaning of the Act and to what extent the petitioner is entitled to receive the gratuity. The respondent Municipality is directed to calculate the unutilised leave of the petitioner and to pay the leave salary in accordance with the rules governing the service condition of the petitioner.

Such payment shall be made on or before 31st December, 2006. In the event the Municipality fails to compute and pay the leave salary within the

aforesaid period, the Municipality shall, commencing from 1st January, 2007, pay interest @ 6 per cent per annum on such amount till the date of payment. Rule is made absolute to the above extent. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

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